

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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JUN 27 1994

In the Matter of )  
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Further Forbearance from Title II )  
Regulation for Certain Types of )  
Commercial Mobile Radio Service Providers)

GN Docket No. 94-33

To: The Commission

COMMENTS OF DIAL PAGE, INC.  
ON FURTHER NOTICE OF PROPOSED RULE MAKING

Dial Page, Inc. ("Dial Page"), by its attorneys and pursuant to Rule Section 1.415, submits its comments in response to the Commission's Notice of Proposed Rule Making in the above-captioned proceeding.<sup>1/</sup>

1. Dial Page is a Delaware corporation which itself and through various subsidiaries provides Public Land Mobile Service ("PLMS"), Private Carrier Paging Service ("PCP"), and Specialized Mobile Radio Service ("SMR") throughout the southern United States. Dial Page, through Dial Call, Inc. and related subsidiaries, has recently made a substantial investment in SMR service and has announced plans to establish an enhanced SMR system ("ESMR") throughout the southern United States. Dial Page expects this system to compete with the established cellular duopolies in the region as well as with providers of the recently authorized Personal Communications Service ("PCS") and other services based on developing technologies.

2. This proceeding seeks to determine, pursuant to Sections 3(b) and 332 of the Communications Act of 1934, as amended ("Act"), which remaining provisions of Title II of the Act, Sections 201 et

<sup>1/</sup> See Commercial Mobile Service Providers, 9 FCC Rcd 2164, 59 Fed. Reg. \_\_\_\_\_ (May 4, 1994) ("NPRM").

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seq., should apply to Commercial Mobile Radio Service ("CMRS") providers, such as Dial Page.<sup>2/</sup>

3. *General Principles of Forbearance.* Section 332(c)(1)(A) of the Act grants the Commission discretion to forbear from applying specific provisions of Title II to certain CMRS providers if the Commission determines:<sup>3/</sup>

- (i) enforcement of such provision is not necessary to ensure the charges, practices, classifications, or regulations for or in connection with that service are just and reasonable and not unjustly discriminatory;
- (ii) enforcement of such provisions is not necessary for the protection of consumers; and
- (iii) forbearance is consistent with the public interest.

4. The Commission has specifically requested comment on whether certain classes of CMRS providers generally merit additional forbearance, and if so, the criteria the Commission should employ in arriving at such a decision. NPRM, 9 FCC Rcd at 2171-72. Dial Page believes the Commission should forbear from applying the various provisions of Title II to the following classes of CMRS providers:<sup>4/</sup>

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<sup>2/</sup> The Act gives the Commission discretion to forbear from applying any of the provisions of Title II to CMRS providers, except Sections 201, 202 and 208. Pursuant to its decision in Regulatory Treatment of Mobile Services, 9 FCC Rcd 1411 (1994), the Commission exercised its discretion to forbear from applying Sections 203, 204, 205 211, 212 and 214 to CMRS providers. This proceeding seeks to determine which other provisions of Title II the Commission should forbear from applying.

<sup>3/</sup> The legislative history of this section indicates that the Commission has authority to apply forbearance differently among CMRS providers to fulfill the intent of the section. See NPRM, 9 FCC Rcd at 2165 & n.10.

<sup>4/</sup> The Commission has also suggested the possibility of forbearance with respect to small CMRS providers. Dial Page  
(continued...)

- (1) Providers of emerging communications systems, such as ESMR and PCS;
- (2) CMRS providers which would previously have been classified as Private Carriers;<sup>5/</sup>
- (3) Providers of narrow-band services such as paging.

5. With respect to these classes of CMRS licensees, except in unusual situations, each of the three forbearance criteria are likely to be met. First, because the Commission is required to apply Sections 201 and 202 of the Act to all CMRS providers, enforcement of other provisions of Title II is unnecessary to prevent unreasonable or discriminatory practices. Second, such service providers will have no market power and thus do not present a significant risk of harm to consumers in the absence of regulation. Third, forbearance of regulation of developing CMRS services, in particular, helps achieve the important public interest goal of fostering a competitive CMRS market.<sup>6/</sup> Because the cost of regulating developing CMRS service providers adversely impacts these entities on a larger scale than mature CMRS

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<sup>4/</sup>(...continued)

is generally supportive of such forbearance, but notes the difficulty in establishing the proper definition of a small provider.

<sup>5/</sup> Because Congress and the FCC have established a three year transition period for conversion of previously "private" carriers, most reclassified CMRS providers will not be subject to the statutory obligations of common carriers, including those discussed herein, prior to August 10, 1996. However, licensees which were granted their initial authorizations after August 10, 1993, are immediately affected by those portions of Title II of the Act which the Commission does not forebear from enforcing.

<sup>6/</sup> Developing CMRS providers are at a particular disadvantage to mature service providers in bearing the costs of regulation because they have a more limited and less stable customer base to absorb these costs.

providers, and because ultimately a more competitive CMRS industry is beneficial to consumers and the public at large, forbearance as to these entities should be the rule, rather than the exception. Finally, most of the proposed regulations relate to services irrelevant to paging providers.

6. Dial Page sees a clear distinction in the current and foreseeable future CMRS market between the dominant duopoly cellular carriers and all other CMRS providers, wide-band or narrow-band. Cellular carriers have enjoyed a ten year head start over all other "wide-band" CMRS providers. They were each given 25 Mhz of clear, unimpeded spectrum. No other CMRS provider has enjoyed these same benefits. Thus, what might be appropriate regulation to benefit the consuming public in the context of the cellular service, is likely to be unnecessarily burdensome to other small or startup CMRS providers.

7. In the discussion below, Dial Page analyzes each of the various remaining provisions of the Act in light of the above principles.

8. *Sections 210, 213, 215, 218 and 220.* With respect to the specific provisions of the Act discussed in the NPRM, Dial Page agrees that the Commission need take no action with respect to Sections 210, 213, 215, 218 and 220. Dial Page agrees that in the absence of further rulemaking proceedings, none of these provisions presently places obligations on CMRS providers. See NPRM, 9 FCC Rcd at 2166. Dial Page would again emphasize that if the Commission decides to exercise any of its authority under the foregoing provisions, it should decline to apply their provisions to the CMRS providers discussed above.

9. *Section 223.* Section 223(c)(1) forbids a common carrier, to the extent technically feasible, to permit access to an obscene or indecent communication from the telephone of any subscriber who has not previously requested such access (otherwise known as reverse blocking), if the carrier bills and collects fees for an "adult services provider." This provision would require a CMRS provider to program its switch to accomplish this blocking.<sup>7/</sup> As the Commission indicates, this provision is aimed at protecting minors. NPRM, 9 FCC Rcd at 2167.

10. Although it is true that CMRS provision of billing and collection services to adult services providers would be entirely voluntary, it would appear that application of this provision to CMRS service is not needed to protect minors. Minors, by and large, are not CMRS subscribers, nor do they generally have unrestricted access to CMRS units because (1) billing for such units is accomplished on an air-time basis, (2) the bulk of CMRS units are installed in vehicles, and (3) the bulk of such units are used in trade and business. Thus, each of the three forbearance tests is met here.

11. Moreover, although CMRS providers generally do not offer information type services, this is a potential revenue source for them in the future. Should they offer such services, it would appear that Sections 201 and 202 would, in turn, require them to offer so-called adult information services along with any other

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<sup>7/</sup> This provision is relevant only to wide-band voice systems. It would not effect paging or data only services.

information services offered.<sup>8/</sup> If significant problems of exposure to minors were presented at that time, it would be the appropriate point to apply this provision to CMRS providers.

12. *Section 225.* Section 225 requires all common carriers providing voice transmission service to provide Telecommunications Relay Service ("TRS") throughout its service area. TRS ensures that the hearing or speech-impaired can communicate by telephone with non-impaired individuals.

13. Dial Page urges the Commission to exempt CMRS providers from the obligation of offering TRS service. Dial Page does not dispute the public interest benefits of TRS service in achieving universal service. But that goal is met by the requirement that landline telephone companies provide the service. The goal of universal service is not appreciably served by requiring its provision by CMRS licensees. The inherent mobile nature of CMRS service does not lend itself easily to use of TTY equipment. Thus, imposition of a requirement on CMRS licensees to provide TRS would be unduly burdensome in light of the projected low demand for such service. Moreover, Dial Page has serious concerns whether TRS service is compatible with most CMRS equipment.<sup>9/</sup>

14. Dial Page does not believe it is necessarily appropriate to impose Section 225's TRS funding obligations on CMRS providers. However, with respect to carriers providing wide-band voice and

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<sup>8/</sup> To the extent any such services are obscene, Section 223 would appear to prohibit their provision outright.

<sup>9/</sup> TRS service is inapplicable to paging subscribers. However, the needs of hearing-impaired paging subscribers are readily met through alphanumeric pagers which vibrate when activated, displaying a written message.

data service, that funding obligation (.00030 of interstate revenues or a minimum of \$100) is so small that it is not a significant burden. Thus, when weighed against the important public interest concerns embodied in the statute, the Commission should not forbear from its application to those CMRS carriers. As to narrow-band carriers, however, Dial Page believes that forbearance is appropriate for paging type carriers, which generally do not provide voice transmission service, and would urge the Commission to forbear from applying Section 225's financial obligations to these carriers.

15. *Section 226.* This section regulates Operator Service Providers ("OSP") and telephone aggregators. OSP's are required to identify themselves, may not charge for uncompleted calls in equal access areas having answer supervision, and may not knowingly bill for unanswered calls where equal access is unavailable. Aggregators are required to identify and disclose certain information regarding the presubscribed OSP, to disclose that rate information is available, and to disclose that the consumer has a right to use another OSP.<sup>10/</sup> See generally, NPRM, 9 FCC Rcd at 2169.

16. The situation which gave rise to OSP abuse was the captive customer problem in hotels, hospitals, and other places of temporary lodging. This is uniquely a wireline telephone service problem that arises because there is no effective consumer choice and no need for the OSP to keep a customer satisfied. CMRS

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<sup>10/</sup> The aggregator must also allow users of presubscribed OSP telephones to access other OSP's using 800 or 950 numbers and, pursuant to an established schedule, allow the consumer to use equal access codes to access the customer's choice of OSP.

providers generally do not offer OSP.<sup>11/</sup> Moreover, since there are multiple CMRS competitors, the likelihood of abusive practices will be limited by competition. Dial Page recommends the Commission forebear application of this section to CMRS providers unless a record develops indicating abuse. Dial Page notes that the general provisions of Sections 201 and 202 relating to unreasonable and discriminatory practices would serve as a means for situations of abuse to be brought to the Commission's attention via the complaint process. Should OSP abuse become a substantial problem among CMRS providers, the application of Section 226 would then be in order.

17. Moreover, as the Commission indicates in its NPRM (9 FCC Rcd at 2169), this section is one where the burden of compliance is likely greater for CMRS providers utilizing emerging technology than for other carriers. As such, forbearance is particularly appropriate.

18. *Section 227.* Dial Page agrees with the Commission's analysis that Section 227 generally does not apply to CMRS carriers in their capacity as common carriers as long as the Commission continues to determine that the costs of establishing a national do-not-call database outweighs its benefits.<sup>12/</sup> Therefore, no need for further forbearance exists.

19. *Section 228.* The Commission seeks comment on whether obligations under the Telephone Disclosure and Dispute Resolution

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<sup>11/</sup> Indeed, OSP services cannot technically be offered by paging providers.

<sup>12/</sup> Dial Page notes there appears to be serious first amendment issues raise by at least portions of this provision. See Moser v. FCC, 826 F.Supp. 360 (D. Or. 1993), appeal pending sub nom., Moser v. FCC, Case No. 93-3586 (filed July 28, 1993 9th Cir.).



Act ("TDDRA") imposed on common carriers should apply to CMRS providers.<sup>13/</sup>

20. Dial Page urges the Commission not to impose TDDRA obligations on CMRS providers. CMRS licensees provide interconnected service to their customers by connecting with local exchange carriers, which are already subject to TDDRA, and which must therefore tariff blocking services. Imposition of this requirement on CMRS providers would thus be an unnecessary and duplicative regulation. In any event, as with Section 223's blocking requirements, CMRS blocking of 900 services would appear unnecessary to protect consumers from inadvertent access by minors or other unauthorized persons, given the greater degree of control subscribers have of mobile telecommunications equipment. In any event, to Dial Page's knowledge, such blocking was widely offered by mobile carriers prior to passage of Section 228 and continues to be today. Thus, customer demand, rather than the law, adequately protects consumers.

21. With respect to TDDRA obligations on common carriers in general, Dial Page's experience is that CMRS licensees do not provide 800 service or collect information services, nor do they bill or collect for 900 service providers.<sup>14/</sup> Should these practices become widespread and should abuses develop, the

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<sup>13/</sup> NPRM, 9 FCC Rcd at 2170-71. TDDRA requires local exchange carriers to provide customers a blocking option for 900 pay-per-call services, and to tariff the terms and conditions of blocking. In addition, common carriers may not charge for 800 information services and are restricted in charges for collect information services. Moreover, they may not disconnect service for failure to pay for pay-per-call charges.

<sup>14/</sup> Moreover, the TDDRA obligations relate to services which are inapplicable to paging providers.

Commission should address at that time whether to impose Section 228's requirements on CMRS carriers.

22. *Conclusion.* Dial Page urges the Commission to forbear from applying the remaining provisions of Title II of the Act to (1) providers of emerging communications systems, such as ESMR and PCS, (2) CMRS providers which would previously have been classified as Private Carriers, and (3) providers of narrow-band services such as paging. As to these CMRS carriers, enforcement of other provisions of Title II is unnecessary to prevent unreasonable or discriminatory practices, such service providers will have no market power and thus do not present a significant risk of harm to consumers in the absence of regulation, and forbearance of regulation will help achieve the important public interest goal of fostering a competitive CMRS market.

Respectfully submitted,

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